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CERTIFIED FOR PARTIAL PUBLICATION*

COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

JAIMIE FULLER et al, Plaintiffs and Appellants, v. DEPARTMENT OF TRANSPORTATION, Defendant and Respondent.	E026784 (Super.Ct.No. 23684) O P I N I O N

APPEAL from the Superior Court of Inyo County. Robert L. Martin, Judge. (Retired Associate Justice of the Court of Appeal, Fifth District assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Forgie & Jacobs, Peter S. Forgie, Cynthia F. Biersteker and Law Offices of Michael Oran and Michael Oran for Plaintiffs and Appellants.

Bruce A. Behrens, Chief Counsel, Brelend C. Gowan, Deputy Chief Counsel, Richard A. Wehe, Assistant Chief Counsel, Gary A. Geren, Richard D. Birdsall, Roger Formanek and Jean Scherer for Defendant and Respondent.

Plaintiffs and appellants Jaimie and Christopher Fuller, and Brooke, Jamie and Robin Knowles, filed actions for wrongful death when their decedents were killed in an automobile accident on Highway 395 near the community of Olancha in Inyo County. Plaintiffs sued the other motorists involved, as well as defendant and respondent State of California, Department of Transportation (hereafter, Caltrans). The theory pled against Caltrans was liability for a dangerous condition of public property. The trial court granted Caltrans's motion for summary adjudication of issues with respect to some aspects of design immunity. After the close of plaintiffs' case, the court also granted Caltrans's motion for nonsuit. Plaintiffs appeal from the judgment of nonsuit. They argue that the court erred in granting summary adjudication of issues, that the court erred in excluding certain evidence at trial, and in granting the motion for nonsuit. We shall affirm the judgment.

FACTS AND PROCEDURAL HISTORY

Olancha is a small community located south of Bishop, California, on Highway 395. State Highway 190, the major road to Death Valley, abuts Highway 395 in the Olancha area. On the morning of September 25, 1997, Rudi Kramer, a German tourist, was driving a motor home on State Highway 190. When State Highway 190 intersected and ended at Highway 395, Kramer turned his motor home southbound onto Highway 395. Because he

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* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for

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was confused about his route, Kramer stopped his motor home, at approximately the 34.50 milepost of Highway 395, to consult maps. Kramer believed he stopped his motor home completely off the roadway on the shoulder.

Meanwhile, Leonard Smith was driving his motor home southbound on Highway 395. Approximately 800 feet north of where Kramer's motor home was stopped, Smith approached a curve in the roadway, driving at approximately 60-65 miles per hour. According to Smith, Kramer's motor home was stopped in the middle of the southbound traffic lane. When Smith realized that Kramer's motor home was actually stopped, he braked to a halt behind Kramer.

Hilario Chairez was driving a tractor-trailer rig southbound on Highway 395. He had been following Smith's motor home for some time, staying approximately 300 feet behind Smith's vehicle. When Chairez entered the Olancha curve, his attention was diverted to the Olancha post office and a pickup truck that appeared to be preparing to enter the roadway from the post office parking lot. When Chairez redirected his attention to the roadway in front of him, he saw the Smith motor home braking to a stop for no apparent reason. Chairez slammed on his brakes; his truck jackknifed and skidded into the northbound lane.

William Fuller and James Knowles, the decedents, were driving northbound on Highway 395. When Chairez's truck rig skidded into the northbound lane, the decedents' vehicle collided head-on with Chairez's truck. The decedents were killed by the impact.

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publication with the exception of parts I, III, IV, V, VI, and VII of the Analysis.

Each decedent's survivors filed a separate complaint in Los Angeles County. The actions were consolidated on November 6, 1998. After their initial complaints, plaintiffs also filed first amended complaints to name Caltrans as a defendant. Caltrans moved the venue to Inyo County.

On July 26, 1999, Caltrans moved for summary adjudication of issues, to the extent that plaintiffs' cause of action for dangerous condition of public property was predicated upon the impropriety of the posted speed limit (55 miles per hour). The trial court granted the motion.

During trial, Caltrans also moved for summary adjudication of an additional theory of liability for the dangerous condition of public property. To the extent that plaintiffs' cause of action was predicated upon inadequacy of the roadway shoulder, Caltrans claimed immunity for the shoulder design. The court granted this motion also.

Because of the court's rulings on governmental immunity, various items of plaintiffs' proffered evidence were not admitted at trial.

At the close of plaintiffs' case, Caltrans moved for nonsuit. The trial court found against plaintiffs and entered a judgment of nonsuit.

Plaintiffs now appeal. They argue (1) the court erred in finding design immunity relating to speed limits or speed zone issues, (2) the court erred in finding design immunity for the road shoulder, (3) the alleged design deficiencies constituted a motorist trap, which is an exception to design immunity, (4) the court erred in excluding various items of evidence, and (5) the court erred in granting nonsuit.

ANALYSIS

I. Reversal Is Not Required for Granting "Summary Adjudication of Issues" Which Did Not Dispose of an Entire Cause of Action

Plaintiffs argue that, under summary judgment procedures amended in 1990, Code of Civil Procedure section 437c should no longer be used to adjudicate discrete facts or issues that do not completely dispose of a cause of action or a defense.[1] "Code of Civil Procedure section 437c, subdivision (f), was meant to 'eliminate summary adjudication motions that would not reduce the costs and length of litigation.'"[2] Caltrans's motion for summary adjudication of issues did not completely dispose of plaintiffs' cause of action for dangerous condition of public property, nor establish governmental immunity as a complete defense to the cause of action; therefore, plaintiffs argue, it was improper for the court to consider, much less to grant, the motion for summary adjudication of issues.

Caltrans responds that either (1) all the factors plaintiffs listed in their complaints must combine into a single wrong—"dangerous condition of public property"—such that the elimination of any one factor, such as speed, defeats the cause of action, or (2) each of the factors or conditions plaintiffs complain of is an independent wrongful act, amounting to a single cause of action in its own right; thus, the summary adjudication of the speed limit issue did dispose of an "entire" cause of action.

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[1] *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1853 (*Lilienthal*).

[2] *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 96, citing *Lilienthal*.

Caltrans does not seriously contend that its first theory is actually correct; otherwise, there would and could have been no trial at all, even though Caltrans's motion failed to dispose of numerous mechanisms by which plaintiffs alleged the highway was rendered dangerous.

The second theory is also untenable. While it is true, as Caltrans points out, that combining more than one wrong into a single cause of action does not, ipso facto, make it so,[3] neither is it obvious that the factors plaintiffs alleged contributed to a dangerous condition of public property should have been stated as numerous, distinct causes of action.

"California has consistently applied the 'primary rights' theory, under which the invasion of one primary right gives rise to a single cause of action."[4] Here, there was only one incident of injury. Only a single primary right was involved: the maintenance of public property in a safe condition. Nor is it clear that each factor of dangerousness was intended to state an entirely separate theory of liability.[5] That more than one aspect of the property's condition may have contributed to its allegedly unsafe condition does not transform each alleged deficiency into a distinct cause of action.

Lilienthal, supra, is distinguishable. There, the court held that, "where a plaintiff had alleged within one 'cause of action' two separate and distinct obligations relating to two separate and distinct claims, the trial court could not refuse to rule on the merits of a

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[3] *Lilienthal*, *supra*, 12 Cal.App.4th 1848, 1854.
[4] *Slater v. Blackwood* (1975) 15 Cal.3d 791, 795.
[5] *Lilienthal*, *supra*, 12 Cal.App.4th 1848, 1853.

motion for summary adjudication filed by defendants which related only to one of the obligations. In [*Lilienthal*], plaintiff sued defendants for legal malpractice in connection with two separate and distinct legal matters, which had nothing to do with each other, and the court concluded that the two matters involved separate and distinct causes of action regardless of how pled in the complaint."[6] Here, of course, there are no such separate and distinct wrongs.

Accordingly, the motion for summary adjudication of issues did not dispose of an entire cause of action, claim for damages, or defense, contrary to the intent of Code of Civil Procedure section 437c, subdivision (f). Our conclusion does not, however, mean that reversal of the judgment is required. The consequence of the trial court's ruling on the motion for summary adjudication of issues was the exclusion of evidence concerning the state's decision to set the speed limit in the Olancha area at 55 miles per hour. If the trial court was correct in principle—that is, if Caltrans's decision to set the speed limit at 55 miles per hour is encompassed within governmental immunity—then the jury was not entitled to hear evidence suggesting that the state should somehow be liable for that decision. The motion for summary adjudication of issues functioned as a motion in limine to exclude certain evidence. We next address the question whether the evidence was properly excluded because of governmental immunity.

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[6] *DeCastro West Chodorow & Burns, Inc. v. Superior Court* (1996) 47 Cal.App.4th 410, 421, citing *Lilienthal*, *supra*, 12 Cal.App.4th 1848, at page 1854.

II. The Design Immunity Applies to the Setting of Speed Limits in This Case

A. Standard of Review

"The State is not liable for a defect in the design plan for a public improvement if it can establish the three elements that constitute the design immunity affirmative defense. The State must show: (1) a causal relationship between the project design and the accident; (2) discretionary approval of the design prior to construction; and (3) substantial evidence supporting the reasonableness of the design. [Citations.] The trial court applies the deferential 'substantial evidence' standard traditionally employed by reviewing courts to determine whether any reasonable state official could have approved the challenged design. [Citation.] The rationale underlying design immunity is to prevent a jury from reweighing the same factors considered by the governmental entity which approved the design. [Citation.] Whether each element of design immunity exists is a question of law."[7] We review questions of law de novo.[8]

B. The Elements of Design Immunity Were Met for the Setting of the Speed Limit

1. Was the Project Design a Cause of the Accident?

The entire thrust of plaintiffs' assertions both at trial and on appeal is that speed through Olancha was too high. The only reason to admit any evidence concerning speed limits, speed advisory warnings, and other matters related to speed would be to show that

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[7] *Alvarez v. State of California* (1999) 79 Cal.App.4th 720, 727-728.

[8] *People v. Louis* (1986) 42 Cal.3d 969, 985, disapproved on other grounds in *People v. Mickey* (1991) 54 Cal.3d 612, 672, footnote 9.

Caltrans's decisions concerning speed, including setting of the speed limit, somehow caused this accident. Otherwise, no evidence concerning speed or speed limit would be relevant. Caltrans relied on plaintiffs' pleadings to establish the necessary assertion of causation. If, as plaintiffs suggest, Caltrans failed to prove the first element of design immunity—causation—the result would not be that evidence of the speed limit would be admissible. Rather, without any causal connection, evidence concerning the speed limit would be completely irrelevant and still properly excluded at trial. Plaintiffs cannot now deny the efficacy of their allegations.

2. The "Design" Was Discretionarily Approved Before Construction

Plaintiffs urge that the setting of a speed limit is not subject to the design immunity defense, because it has "nothing to do with the construction of, or improvements to, public property." We cannot agree with this assessment. Without question, roadways and roadway construction are improvements to public property which are subject to design immunity.[9] Roads are intended to carry vehicular traffic; vehicular traffic movement necessarily contemplates safe and efficient speeds at which the vehicles will travel. "Design speed," such as the safe speed at which a curve may be negotiated, is an inherent part of roadway design.[10] The speeds at which vehicles travel, and speed regulations, are part and parcel of the safety features of a road improvement. We conclude, therefore, that if a speed limit is

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[9] Cf. *Levin v. State of California* (1983) 146 Cal.App.3d 410; *Anderson v. City of Thousand Oaks* (1976) 65 Cal.App.3d 82.

[10] Cf. *Anderson v. City of Thousand Oaks, supra,* 65 Cal.App.3d 82, 92.

set in accordance with some plan and discretionarily adopted by an employee with authority to do so, the setting of a regulatory speed limit is subject to design immunity analysis.

Our conclusion is bolstered by *Uyeno v. State of California*,[11] concerning the timing of traffic lights. There, a 10-year-old boy was killed in a pedestrian cross-walk. The plaintiffs alleged that the traffic light sequence should have used a two-second all-red mode instead of a half-second all-red mode, to allow vehicular traffic to clear before pedestrians were allowed to proceed. The plaintiffs argued that the timing of the signals was not a "plan" or "design" subject to the design immunity because the timing was not determined in advance of its implementation.[12] The court ruled, however, that the operation of the traffic lights, including the timing, was integral to the system. "When a part of an improvement is integral to its function, it must be considered to be within the scope of the design for that improvement, even if it is to be later formulated."[13]

In terms of prior approval, the evidence in *Uyeno* showed that a timing plan was prepared after the traffic signals were constructed, based upon usage data and prepared guidelines. Inasmuch as signal timing "requires some observance in operation and does not readily lend itself to a full preimplementation determination,"[14] the signal operator's on-site approval and later preparation of a report satisfied the requirement of prior

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[11] *Uyeno v. State of California* (1991) 234 Cal.App.3d 1371 (*Uyeno).*
[12] *Uyeno*, *supra*, 234 Cal.App.3d 1371, 1377.
[13] *Uyeno*, *supra*, 234 Cal.App.3d 1371, 1377.
[14] *Uyeno*, *supra*, 234 Cal.App.3d 1371, 1379.

discretionary approval. At least "the light intervals are approved before the public is left to rely upon the signals."[15]

Similarly, the setting of an appropriate regulatory speed limit is integral to the functioning of the roadway. Again, "prior discretionary approval" encompasses decisions that must be made based upon observance in operation. Here, Caltrans's decision to set the regulatory speed limit at 55 miles per hour was based upon an on-site speed study, prepared according to the Caltrans manual, and included "prevailing speed as determined by traffic engineering measurements, accident records, as well as highway, traffic, and roadside conditions not readily apparent to the driver." Caltrans's employee approved the speed zone plan pursuant to the 1996 speed study. This approval was sufficient for purposes of design immunity under *Uyeno*.

Plaintiffs argue that, inasmuch as no reported case has ever applied the design immunity to the decision to set a certain speed limit, the design immunity protection must not apply. While we agree that no reported case has, so far as our research shows, yet applied the design immunity to the speed limit regulatory decision, the state is nevertheless immune, by parity of reasoning with *Uyeno*.

Plaintiffs point out that, in other cases, courts have subjected the speed limit setting decision to judicial scrutiny. The cases cited are not, however, apposite.

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[15] *Uyeno*, *supra*, 234 Cal.App.3d 1371, 1379.

In *Harland v. State of California*,[16] the court permitted evidence of a dangerous condition of public property for a bridge, including expert testimony that the posted speed limit was too high, considering other conditions on the bridge, such as the lack of shoulder width, lack of a median divider, a curve in the bridge itself, and so on. Moreover, there was evidence in *Harland* that the California Highway Patrol had recommended reducing the speed limit to 50 or 55 miles per hour. *Harland* is inapplicable here. First, the state had notice of changed circumstances. Second, there is no hint that the state had offered any evidence concerning design immunity for the decision setting the speed limit on the bridge. There was no showing, for example, that the speed limit had been set by following the Caltrans manual and conducting a speed study. Cases are not authority for propositions not considered.[17] Third, the main mechanism of dangerous condition was the lack of a median barrier. *Harland* does not aid plaintiffs.

Likewise, *Anderson v. City of Thousand Oaks*, *supra*, is inapposite. There, the decedent was killed when the car in which he was riding failed to negotiate a curve on a roadway that had been open for one month. The public entity moved for summary judgment on the question of design immunity. The appellate court agreed with the trial court that the defense of design immunity, as an initial proposition, had been established. The opposing affidavits did indicate that the design speed of the curve was 45 miles per hour; with other factors, the curve could safely be negotiated at a maximum speed of 55 miles per hour, but

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[16] *Harland v. State of California* (1977) 75 Cal.App.3d 475.

the road was not safe at the prevailing speed limit of 65 miles per hour. The appellate court determined that there was sufficient evidence to show that the banking of the curve was part of the design, and that the design plans included consideration of warning and other signs for the curve. The court did reverse the summary judgment, however, because there was a triable issue of fact whether the public entity had notice, in the one month of the road's use, that it was in a dangerous condition as designed.[18]

The *Anderson* court's receipt of evidence, in the moving and opposing papers on summary judgment, concerning the speed limit and its relation to the design of the curve in the road, does not indicate that speed limit setting is not part of roadway design. First, the trial court received the evidence in a limited context—motion for summary judgment—and did not admit such speed limit evidence at trial. Second, nothing in *Anderson* involved proof that the speed limit itself had been set as part of a speed survey or other plan. Third, the critical issue was notice of a dangerous condition of the roadway; even if the public entity was immune for the decision to set a certain speed limit for the roadway, it might still have had notice that the curved portion of the roadway was in a dangerous condition at the speed as set, and to have incurred additional duties to warn or correct the dangerous condition. *Anderson* does not support the proposition that design immunity does not apply to the setting of speed limits for a roadway according to a speed survey plan.

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[17] *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 372.

We also disagree with plaintiffs' assertion that protection for the setting of speed limits does not come within the rationale for granting design immunity. The design immunity defense "'prevent[s] a jury from simply reweighing the same factors considered by the governmental entity which approved the design.'"[19] The immunity principle is rooted in the separation of powers doctrine, that the judicial branch should not interfere in the discretionary decisions of the Legislature or the executive branch.[20] The setting of speed limits requires the exercise of engineering and management expertise: i.e., executive discretion.

Plaintiffs protest that the executive branch's setting of speed limits is routinely scrutinized by the courts in the context of speeding tickets: under Vehicle Code sections 40802 and 40803, the state must produce evidence of a recent speed and traffic survey to justify speed limit setting when a ticket is issued pursuant to a radar reading. We find plaintiffs' argument unpersuasive. First, the scrutiny is very limited—it applies only to tickets issued by radar reading. Speed limit studies are not required for tickets issued based upon speedometer pacing. Second, the purpose is limited—it is to prevent speed traps, or speed limits set artificially low, when completely unjustified by the speed and traffic studies. Third, the context is completely different—in a speeding ticket challenge, no one

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[18] *Anderson v. City of Thousand Oaks*, *supra*, 65 Cal.App.3d 82, 89-91, 91-92.

[19] *Cameron v. State of California* (1972) 7 Cal.3d 318, 326; *Baldwin v. State of California* (1972) 6 Cal.3d 424, 432, footnote 7.

is seeking to charge the public entity with financial liability for its discretionary decision in setting the speed limit. Allowing speeding ticket challenges does nothing to undermine the rationale for affording the public entity immunity from tort liability for the setting of speed limits according to an approved procedure, supported by traffic and speed studies.

3. The Approval Was Reasonable

Plaintiffs assert that the approval of the 55-mile-per-hour speed limit was unreasonable because the speed and traffic study did not take account, as required by Vehicle Code section 627, of highway, traffic and roadside conditions not readily apparent to drivers. To the contrary, Caltrans's declarations averred that the speed study did take account of "prevailing speed . . , accident records, as well as highway, traffic and roadside conditions not readily apparent to the driver. The survey included determinations of alignment, gradient, roadway width, number of striped lanes, type of diversion strip, traffic signals data, average daily traffic, [observed speeds], and existing marked/signed speed zone limitations." Caltrans's witnesses averred that the speed plan was consistent with prevailing standards of design and safety. The speed plan was approved by Caltrans's traffic engineer. The trial court properly concluded the approval was reasonable.

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20 See *Higgins v. State of California* (1997) 54 Cal.App.4th 177, 185.

Because the setting of the speed limit was subject to design immunity, plaintiffs were not entitled to place evidence before the jury suggesting that the state should be liable for its speed-limit-setting decision.

III. Caltrans Was Immune for the Design of the Roadway Shoulder

At the close of the plaintiffs' case, Caltrans moved for summary adjudication of issues on the question of design immunity for the configuration of the roadway shoulder. Plaintiffs contended that the absence of an eight-foot paved shoulder was a dangerous condition of property. The roadway at the site of the accident had a shoulder with four feet of paving, and an additional eight or ten feet of gravel or aggregate shoulder material. The trial court granted the motion for summary adjudication of issues. Because the ruling came at the close of plaintiffs' case, it did not operate to prevent plaintiffs from placing evidence before the jury, but the court did consider Caltrans's immunity for the shoulder in evaluating the state of the evidence for purposes of the nonsuit motion. We must therefore determine whether the trial court correctly found design immunity for the roadway shoulder.

A. Standard of Review

The existence of the three elements of design immunity, as before, presents a question of law which we review de novo.

B. Caltrans Established the Design Immunity Defense for the Roadway Shoulder

1. Plaintiffs' Pleadings Established the Causation Prong

Plaintiffs' own pleadings were sufficient to show the element that the design of the road shoulder had a causal connection to the accident. The entire point of plaintiffs' case

was to show that the shoulder configuration, as well as other aspects of the roadway, constituted a dangerous condition of the property. The court, and Caltrans, was entitled to take plaintiffs at their word. Otherwise, evidence concerning the roadway shoulder would have been utterly irrelevant.

2. The Road Shoulder Was Included in Approved Plans

Plaintiffs' expert, Howard Anderson, testified that the roadway as originally designed in 1939 included an eight-foot unpaved shoulder. Sometime between 1939 and 1964, Caltrans installed paving on four feet of the shoulder. Caltrans failed to produce the original pre-1964 plans for the partial paving of the shoulder. Plaintiffs argue, therefore, that Caltrans failed to demonstrate that the decision to pave part of the shoulder was part of an approved plan or design.

Plaintiffs' focus is too narrow. Caltrans did demonstrate that, at the time of a resurfacing project in 1988-1990, the resurfacing plans did encompass consideration of the shoulder paving. Caltrans repaved a portion of the roadway in 1990, around the junction of Highway 190, including the point on Highway 395 where the accident occurred. The repaving job included repaving of the four-foot paved portion of the shoulders, as well as importing tons of new aggregate material for the unpaved portion of the shoulders. The 1988 project plans considered, but decided to defer, paving the shoulders to a full eight feet of width. The plans and specifications for the repaving project were approved by licensed engineers who had discretionary authority to make such approvals.

As the trial court found, substantial evidence supported the conclusion that the paved and unpaved portions of the roadway shoulder were encompassed with the plans and

specifications for the 1988-1990 repaving project. Caltrans fully considered the eight-foot paved shoulders in making its discretionary decisions concerning the repaving project. As long as the engineers considered the injury-producing feature in approving the plans and design of the repaving improvement, the design immunity should apply.[21]

3. The Approval of the Design Was Reasonable

Plaintiffs argue that the approval of the repaving project without eight-foot paved shoulders was unreasonable. They rely on expert Anderson's testimony that federally funded highway projects—the 1990 repaving project qualified for federal highway funding—require eight-foot paved shoulders for major reconstruction. Anderson, plaintiffs' expert, never testified that the repaving job constituted "major" reconstruction. He based his claim that the eight-foot paved shoulder standard should apply because the 1990 project involved some major reconstruction of *drainage facilities*. Clearly, in terms of highway reconstruction, the project was a minor one.

Caltrans adduced evidence which indicated that the approval of the project design, with partially paved and partially graveled shoulders, was reasonable. Accordingly, Caltrans established design immunity for the configuration and design of the roadway shoulders.

IV. The Court Properly Granted the Motion for Nonsuit

This brings us to the trial court's ruling on the motion for nonsuit. Because Caltrans was entitled to design immunity for the setting of the speed limit and the design of the

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[21] *Higgins v. State of California*, *supra*, 54 Cal.App.4th 177, 185-186; *Alvarez v.*

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roadway shoulders, the question is whether the evidence remaining was sufficient to demonstrate a prima facie case of dangerous condition of public property.

A. Standard of Review

On appeal after nonsuit,[22] the appellate court must take account of the entire record and view the evidence in the light most favorable to the plaintiff.[23] The court does not reweigh the evidence.[24] The appellate court will not sustain the judgment unless a judgment for the defendant is required as a matter of law.[25]

B. Nonsuit Was Properly Granted

1. Evidence in Plaintiffs' Favor

Plaintiffs urge that the following evidence supported their claim that the highway was in a dangerous condition at the time of the accident:

First, plaintiffs' expert testified that there was a sight distance restriction at the curve near the Highway 190 junction, north of the accident site.

Second, because of sight restrictions at Shop Street, near the curve, a warning should have been posted to reduce speed to 40 or 45 miles per hour. If such an advisory sign had been posted, the truck driver might have slowed earlier and possibly avoided the accident.

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State of California, *supra*, 79 Cal.App.4th 720, 734-735.

[22] Code of Civil Procedure section 581c.

[23] *Freeman v. Lind* (1986) 181 Cal.App.3d 791, 799.

[24] *LaMonte v. Sanwa Bank California* (1996) 45 Cal.App.4th 509, 517.

[25] *Unigard Ins. Group v. O'Flaherty & Belgum* (1995) 38 Cal.App.4th 1229, 1235.

Third, the evidence showed that Caltrans was aware of "speed variances" on Highway 395 in Olancha. "Speed variances" are the differences between the faster vehicles and the slower vehicles traveling on the same highway. Local traffic in Olancha traveled at slower speeds than through traffic on the highway. Plaintiffs argue that an inference could be drawn that Caltrans should have taken some mitigating measures, such as enhancing visibility, tapering intersections, creating center turn lanes for refuge, or placing warning signs.

Fourth, plaintiffs claim a "lack of adequate information [was] provided to drivers on both Highways 190 and 395 regarding potential hazards to be anticipated in driving through the community created a dangerous condition by luring the uninformed motorists into a trap." If drivers had more information, plaintiffs contend, "those drivers would have reacted in a more cautious manner, thus avoiding the accident."

2. Elements of a Cause of Action for Dangerous Condition of Public Property

Plaintiffs were required to show (1) the property was in a dangerous condition, (2) the injury was proximately caused by the dangerous condition, (3) the dangerous condition created a reasonably foreseeable risk of the kind of injury that occurred, and either (4) a wrongful act of a public employee created the dangerous condition, or (5) the public entity had notice of the dangerous condition in sufficient time to take corrective action.

The alleged potential dangerous conditions plaintiffs identified were: restricted sight distance at the curve near Highway 190, difficulties experienced by local drivers entering Highway 395 from the Shop Street intersection, which should have called for an advisory sign to reduce speed, speed variances, and inadequate informational signs. As to

each potential dangerous condition, plaintiffs have failed to prove an essential element of the case.

3. Plaintiffs Failed to Prove Any Dangerous Condition Was a Cause of the Accident

Whether or not there was a sight distance restriction at the curve north of the Highway 190 junction, the evidence showed there was a clear sight line of approximately 1,000 feet from the point at which a vehicle cleared the curve to the point where Kramer's motor home was stopped. Smith saw Kramer's motor home and stopped safely behind it. Chairez testified that he first saw the truck at the post office and another car paralleling the road. Then, the rear of Smith's motor home suddenly appeared to him out of the fog. Notably, no other witness saw any fog. Nevertheless, the evidence failed to show that the accident was caused by any sight restriction at the curve; rather, Chairez was either not paying attention to the road in front of him, or he was driving too fast for weather visibility conditions.

Traffic conflicts at Shop Street had nothing to do with this accident. Plaintiffs merely argue that, if there had been a speed advisory sign to warn of such conflicts, Smith and Chairez might have driven more slowly, and might have avoided the accident. Plaintiffs' theory, that a speed advisory warning *might* have had an *incidental* effect on avoiding this accident, is pure conjecture; even if such a sign had existed, plaintiffs utterly failed to prove that the alleged dangerous condition—the traffic conflict at Shop Street—caused or contributed to the accident.

The speed variances at issue here refer to the differences in speed between slower-moving local traffic, and the through highway traffic on Highway 395. The speed variances

are caused by traffic conflicts in Olancha, such as ingress and egress from local streets and businesses. In some sense, speed variance was a cause of the accident: Kramer had stopped his vehicle in the roadway; his speed was zero miles per hour. Kramer testified that he believed he had stopped completely off the roadway onto the shoulder. Apparently, he was mistaken. But speed variances caused by expected, typical traffic conflicts in Olancha had no relation to this accident.

Plaintiffs urge that informational signing was inadequate because there was no community sign on Highway 190 telling Kramer that he was entering the town of Olancha. They speculate that, had there been such a sign, Kramer might not have stopped on Highway 395 to consult his maps. The evidence showed, however, that Kramer had already missed an earlier turnoff from Highway 190 to his intended destination. Further, signs on Highway 190 marked the junction with Highway 395, and indicated destinations of Bishop to the north and Los Angeles to the south. No evidence suggested that, had Kramer known he was in the very small, ill-defined community of Olancha, he would not still have been lost.

Otherwise, plaintiffs fail to indicate what kind of informational sign should have been placed on Highway 395. When asked what Caltrans had "done to educate or alert motorists to the existence of the community of Olancha," Caltrans engineer Jerry Gabriel testified, "we place normally community signs. They have population and elevation and the name of the community on them, as near as our judgment, where the limits would be." When asked, "Do you think it would be prudent to advise or alert motorists who are unfamiliar with the area that they are about to encounter the traffic conflicts inherent in the Olancha community?" Gabriel replied, "The community sign does that . . . ."

Chairez had driven Highway 395 many times over the two years preceding the accident and was familiar with the road and its characteristics. No evidence shows that he was unaware of the existence of Olancha and its potential traffic conflicts.

The evidence presented did not indicate that any of the identified dangerous conditions of the roadway caused or contributed to this accident. The trial court properly granted nonsuit in favor of Caltrans.

V. There Was No "Concealed Trap"

Plaintiffs next contend that the conditions of the highway in Olancha combined to create a hidden trap, for which Caltrans is not immune.

Government Code section 830.8 provides in relevant part: "Neither a public entity nor a public employee is liable under this chapter for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such failure if a signal, sign, marking or device (other than one described in Section 830.4) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care."

Plaintiffs' attempt to predicate liability on the "trap" exception must be rejected. In the first place, "the parenthetical clause in section 830.8 makes it clear that its provisions come into play only when it is alleged that some type of sign, device or marking *other than*

those listed in section 830.4 should have been provided."[26] Government Code section 830.4 provides: "[a] condition is not a dangerous condition . . . merely because of the failure to provide regulatory traffic control signals, stop signs, yield right-of-way signs, or speed restriction signs, as described by the Vehicle Code . . . ." To the extent that plaintiffs' arguments rest upon the failure to control speed in and through Olancha—a failure to provide a speed restriction sign—the trap exception, by its own terms, does not apply.

Secondly, the trap exception obtains only when circumstances are not readily apparent or expected, and when the property is being used with due care. So far as the record here shows, neither Kramer nor Chairez used the highway with due care, and Chairez had reason to know of potential traffic conflicts in Olancha. Kramer failed to pull his motor home off the roadway when he stopped. Chairez was familiar with the highway and had driven it numerous times. He saw a motor home ahead of him slow down and turn in at the Ranch House Cafe north of the Highway 190 junction. He actually slowed to allow that motor home to turn, but he then resumed highway speed. He testified he saw a pickup truck at the post office and another car paralleling the roadway after the Highway 190 curve, but he did not slow down. The traffic conflicts were readily apparent to him. He was driving too fast for visibility conditions, however, be they fog, drizzle or rain. He failed to exercise due care.

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[26] *City of South Lake Tahoe v. Superior Court* (1998) 62 Cal.App.4th 971, 976,
[footnote continued on next page]

Third, plaintiffs have not clearly identified any condition which could constitute a trap. A "concealed trap" may exist, for example, when a "public entity fails to post signs warning of a sharp or poorly banked curve ahead on its road or of a hidden intersection behind a promontory [citations], or where a design defect in the roadway causes moisture to freeze and create an icy road surface, a fact known to the public entity but not to unsuspecting motorists [citation], or where road work is being performed on a highway [citation]."[27] Similarly, motorists may be lured into a trap when, for example, a traffic light erroneously signals "go" in all four directions.[28] Here, no condition of the roadway, which was not readily apparent to motorists, had anything to do with causing the accident.

Fourthly, and even more importantly, Government Code section 830.8 is largely irrelevant here. Plaintiffs' chief argument is that "concealed trap" evidence constitutes an exception to the design immunity statutes, and thus that evidence which was excluded because of design immunity should nonetheless have been admissible to prove a concealed trap. Not so. We agree with *Compton v. City of Santee*,[29] that Government Code section 830.8 was largely irrelevant: "While section 830.8 states that immunity for failure to

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[footnote continued from previous page]

italics added.

[27] *Chowdhury v. City of Los Angeles* (1995) 38 Cal.App.4th 1187, 1197.

[28] *Chowdhury v. City of Los Angeles*, *supra*, 36 Cal.App.4th 1187, 1195, citing *Bady v. Detwiler* (1954) 127 Cal.App.2d 321, 325; *Hoel v. City of Los Angeles* (1955) 136 Cal.App.2d 295, 299; and *Goodman v. Raposa* (1957) 151 Cal.App.2d 830, 832, 834-835.

[29] *Compton v. City of Santee* (1993) 12 Cal.App.4th 591, 600.

provide warning signs does not apply where there is a dangerous hidden condition, it in no way purports to create an exception to design immunity under section 830.6. It would be illogical to hold that a public entity immune from liability because the design was deemed reasonably adoptable, could then be held liable for failing to warn that the design was dangerous." Rather, Government Code section 830.8 "*creates its own limited immunity* (i.e., immunity for failure to provide warning signs), and that the 'hidden trap' rule is an exception to *section 830.8 immunity*."[30] The trap exception is not an exception to design immunity, and does not exist to permit plaintiffs to bring in through the back door evidence of conditions for which, as the court properly ruled up front, Caltrans was immune.

Plaintiffs assert that *Cameron v. State of California*,[31] indicates otherwise. *Cameron* is distinguishable. There, the accident was caused by a curve in the roadway that was improperly banked. The state had obtained a summary judgment ruling in its favor on design immunity. The primary holding was that summary judgment was improper because the state had failed to present any evidence that the superelevation of the curve (faulty banking) had been considered as part of the design. In essence, the superelevation—the feature that was alleged to be the hidden trap—was found not to have been part of the design. The court's pronouncements on hidden trap as defeating features of the design, to which immunity applies, were dicta.

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[30] *Compton v. City of Santee, supra,* 12 Cal.App.4th 591, 600, italics added.
[31] *Cameron v. State of California, supra,* 7 Cal.3d 318.

VI. The Court's Evidentiary Rulings Were Proper

Plaintiffs argue that the trial court erred in excluding documentary evidence which would have showed the existence of a hidden trap in Olancha. Plaintiffs complain that the trial court improperly excluded: (1) a 1989 petition, signed by 450 local residents, complaining to Caltrans that Highway 395 was dangerous through their community; (2) a Caltrans investigation report concerning a 1988 fatal traffic accident at the Highway 190 intersection, noting a speed variance range of 45 to 70 miles per hour on Highway 395; (3) a Caltrans memorandum analyzing traffic factors at a location other than Olancha; (4) a 1993 Caltrans investigation report concerning a rural area, other than Olancha, which included mention of more traffic conditions than the 1988 Olancha report.

A. Standard of Review

When the trial court excludes evidence on the basis that the prejudicial value outweighs the probative value,[32] the ruling is reviewed on appeal for abuse of discretion.[33]

B. The Evidence Was Properly Excluded

We cannot say that the trial court abused its discretion in excluding the aforementioned documentary evidence. First and foremost, plaintiffs' theory of admissibility was to show a hidden trap. As we have demonstrated, Government Code

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[32] Evidence Code section 352.

[33] *People v. Burgener* (1986) 41 Cal.3d 505, 526, overruled on another point in *People v. Reyes* (1998) 19 Cal.4th 743, 753.

section 830.8 does not provide an exception to design immunity, and there was no proper basis for the trap theory.

In addition, the evidence was properly excluded. The 1989 petition preceded the instant accident by seven or eight years. In the meantime, Caltrans had undertaken the road repaving project, adding a left turn pocket at one intersection, paving the tapers at local intersections, and so forth. Conditions were not the same on Highway 395 on the date of the accident as on the date of the petition. The Caltrans 1988 investigation report was also eight or nine years earlier than the instant accident. There was also no showing that the 1988 accident was in any manner like the accident here. The 1993 accident report and the Caltrans memorandum each involved entirely different locations. The court did not abuse its discretion in excluding the evidence.

VII. The Costs Award Was Proper

Plaintiffs perfunctorily challenge the award of costs to Caltrans; the sole ground upon which they purport to do so is the invalidity of the underlying judgment. Inasmuch as we have rejected each of plaintiffs' contentions on appeal concerning the judgment, the award of costs has not been shown to be improper.

DISPOSITION

For the reasons stated, the judgment is affirmed.

CERTIFIED FOR PARTIAL PUBLICATION

Ward, J.

We concur:
McKinster, Acting P.J.
Richli, J.